

## DOCKET FILE COPY ORIGINAL

## FCC LOCAL AND STATE GOVERNMENT ADVISORY COMMITTEE

December 1, 1997

VIA FEDERAL EXPRESS

Ms. Magali Salas, Secretary  
Federal Communications Commission  
1919 N. Street, N.W., Room 222  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

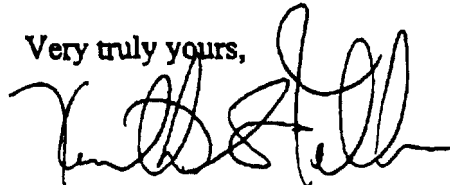
Re: MM Docket No. 97-182

Dear Ms. Salas:

Please find enclosed an original and nine copies of the LSGAC's Advisory Recommendation No. 9 for filing in the above referenced proceeding.

Thank you for your attention to this matter. Please feel free to contact me at (303) 320-6100 if you have any questions regarding this filing.

Very truly yours,



Kenneth S. Fellman  
Chairman, LSGAC

KSF/eaj  
Enclosure

cc: Chairman William E. Kennard (w/ encl.)  
Commissioners Ness, Tristani, Powell and Furchtgott-Roth (w/ encl.)  
Susan Fox, Esq. (w/ encl.)  
Sheryl Wilkerson, Esq. (w/ encl.)  
LSGAC Committee Members (w/ encl.)  
National Association Staff (w/ encl.)

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## **FCC Local and State Government Advisory Committee**

**Advisory Recommendation Number 9:**

### **Notice of Proposed Rulemaking, MM Docket No. 97-182**

1. The National Association of Broadcasters has proposed that the Commission adopt a far reaching and virtually unprecedented rule limiting zoning, building code and other traditional health, safety and welfare authority over all broadcast towers and associated structures. The LSGAC initially responded to this proposal with Advisory Recommendation Number 3.
2. The LSGAC believes that both the Commission and state and local governments have traditional important roles to play in the roll out of digital television. The Commission maintains clear authority to license and set the standards of service for those broadcasters who enjoy the grant of free spectrum for the delivery of digital television. Local governments have an obligation to their constituents to ensure that, to the extent possible, the public health, safety, and welfare are not endangered or otherwise compromised by the construction, modification or installation of broadcast towers. There is no inherent conflict between these federal, state and local roles. Local officials have no intrinsic reason to frustrate the transition to digital television. As the record demonstrates, thousands of towers are in place across the entire country.
3. On September 25, 1997 the LSGAC, through its staff, facilitated an all day meeting among representatives of nine of the ten largest television markets. Several FCC staff members participated in portions of this meeting. As a result of that meeting, and follow up communications with local government representatives in the ten largest markets, the LSGAC believes that there is a need for an ongoing dialogue and education process between local government representatives, Commission staff and broadcasters, to educate all parties as to the expertise of each, and to identify particular problems that might be better solved in a cooperative, as opposed to adversarial, framework.
4. On November 21, 1997, the LSGAC met with the National Association of Broadcasters, and heard a presentation from NAB as to issues broadcasters are facing in the roll out of digital television, and how it feels these issues might best be addressed. The LSGAC believes this meeting was a positive step to begin a dialogue between local governments and broadcasters. Both groups agreed to continue the discussions in the near future.
5. The LSGAC believes that before the Commission seriously considers preemption of traditional local government activities in connection with any type of broadcast facilities, there must be a careful examination of the record upon which preemption is to be based, the effect of Commission action upon the ability of local governments to protect the life and property of their constituents, the efficacy of Commission preemption in meeting the proposed time line, the scope of preemption and the precedent being set by the Commission. The Commission must examine the industry affected by local land use and other traditional authority, i.e., broadcasters,

determine that a truly broad nationwide problem exists, and finally that no less intrusive solutions, short of preemption, exist. Even then, the Commission must ensure that public health and safety are not compromised by the construction, modification or installation of towers and associated facilities for digital television. In addition, the Commission should recognize the legitimate aesthetic concerns created by such towers, particularly new towers, and legitimate land use distinctions. The opening comments of this proceeding do not create any such record.

**RECOMMENDATION:** Based upon the foregoing, and recognizing the existing federal policy to roll out digital television quickly, the LSGAC recommends as follows:

(1) The Commission should set up a "strike force" comprising staff from the Mass Media Bureau, the Office of Engineering and Technology, and any other relevant department, to work with local governments in the jurisdictions affected by the roll out of digital services in the ten major television markets. Broadcasters and broadcast facility owners often make assertions to local officials about technical issues (such as height, location and power requirements) that affect local land use permit requests. At times competing broadcasters and facility owners make conflicting technical assertions. The "strike force" should make itself available to answer any technical questions that fall within the scope of Commission expertise that local officials may have in their review process. In addition, it would be available to other jurisdictions impacted subsequently in the roll out schedule. The LSGAC is willing to assist in facilitating and promoting this process.


(2) The process recommended here by the LSGAC should assist the "strike force" in using what it learns to work with LSGAC and the national organizations representing state and local governments to develop materials to assist other jurisdictions, including one or more fact sheets. The LSGAC has previously recommended that the Commission publish such fact sheets to assist all local governments in connection with the siting and construction of digital television facilities.

(3) The Commission should require broadcasters to submit a digital television facilities plan in each jurisdiction in which the broadcaster will seek to locate new or modified facilities. Such a requirement will allow local planning officials time to evaluate the full complement of facilities that the broadcast industry believes will be necessary in a given area.

(4) In the meantime, the LSGAC and the organizations its members represent, pledge to work with NAB to assist in educating each other's members as to the legitimate role of each side, and to seek to narrow issues of disagreement.

Respectfully submitted on this 1st day of December, 1997.

LOCAL AND STATE GOVERNMENT  
ADVISORY COMMITTEE

By:   
Kenneth S. Fellman, Chair